

ESTTA Tracking number: **ESTTA603580**

Filing date: **05/10/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215699
Party	Defendant HOLAIRA, INC.
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Date	05/10/2014
Attachments	HOLAIRA Answer.pdf(315937 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Application Serial No. 85806379

HOLAIRA

Filed December 19, 2012

Published in the *Official Gazette* on December 3, 2013

BOSTON SCIENTIFIC CORPORATION and
ASTHMATX, INC.

Opposers,

v.

Opposition No. 91215699

HOLAIRA, INC.,

Applicant.

ANSWER TO NOTICE OF OPPOSITION

Holaira, Inc. ("Applicant"), for its Answer to the Notice of Opposition filed by Boston Scientific Corporation and Asthmatx, Inc. ("Opposers") against the application for registration of the mark HOLAIRA, Serial No. 85806379, responds as follows:

Applicant denies each and every allegation of the Notice of Opposition which is not hereinafter specifically admitted.

1. Applicant admits that it filed application Serial No. 85806379 on December 19, 2012, and that the current identification of goods in the application is as stated in Paragraph 1.
2. Applicant states that it has used the HOLAIRA mark in commerce in connection with a clinical trial protocol. Whether Applicant has used the mark "as a trademark" references a legal conclusion to which no response is required. 2.
3. Asserts legal conclusion to which no response is required.

4. Applicant admits that its mark was published for opposition in the *Trademark Official Gazette* on December 3, 2013, but is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 and on that basis denies them.
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 and on that basis denies them.
6. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 6 and on that basis denies them.
7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 and on that basis denies them.
8. U. S. trademark Registration No. 2856168 speaks for itself, but Applicant is otherwise without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 8 and on that basis denies them.
9. U. S. trademark Registration No. 3380080 speaks for itself, but Applicant is otherwise without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 9 and on that basis denies them.
10. Applicant admits that two copies of the registration certificate and TESS record for U. S. Registration No. 2856168 were attached to the Notice of Opposition, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 10 and on that basis denies them.
11. Applicant admits that two copies of the registration certificate and TESS record for U. S. Registration No. 3380080 were attached to the Notice of Opposition, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 11 and on that basis denies them.

12. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 and on that basis denies them.
13. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 and on that basis denies them.
14. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 14 and on that basis denies them.
15. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 15 and on that basis denies them.
16. The registration and application speak for themselves, and Applicant is otherwise without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 16 and on that basis denies them.
17. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 17 and on that basis denies them.
18. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 18 and on that basis denies them.
19. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 19 and on that basis denies them.

20. The registration and application speak for themselves, and Applicant is otherwise without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 20 and on that basis denies them.

21. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21 and on that basis denies them.

22. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 22 and on that basis denies them.

23. Denies.

24. Denies.

25. Denies.

26. Applicant admits its mark contains the letters "LAIR" but denies the remaining allegations of Paragraph 26.

27. Denies.

28. Denies.

29. Opposer's defines "Opposers' Goods" and "Applicant's Goods elsewhere in the Notice of Opposition. To the extent the descriptions of "Opposers' Goods" and "Applicant's Goods" in Paragraph 29 are intended to refer to something other than the defined terms, Applicant admits that the goods identified in its application and its intended goods are "medical devices for treating obstructive lung diseases; medical apparatus and instruments for treating obstructive lung diseases," but is without sufficient information to admit or deny the remaining allegations of Paragraph 29 and on that basis denies them.

30. Denies.

31. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 31 and on that basis denies them.

32. Denies.

33. Applicant admits that its goods are intended for use in treating obstructive lung diseases, but is without sufficient information to admit or deny the remaining allegations of Paragraph 33 and on that basis denies them.

34. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 34 and on that basis denies them.

35. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 35 and on that basis denies them.

36. Applicant admits that its proposed goods, when available, may make use of a catheter, but denies any remaining allegations of Paragraph 36, and specifically denies that its proposed goods are similar or related to any goods offered by Opposers under the ALAIR mark.

37. Denies.

38. Denies.

39. Applicant states its proposed goods, when available, may contain an electrode, but denies any remaining allegations of Paragraph 39, and specifically denies that its proposed goods are similar or related to any goods offered by Opposers under the ALAIR mark.

40. Denies.

41. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 41 and on that basis denies them.

42. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 42 and on that basis denies them.

43. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 43 and on that basis denies them.

44. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 44 and on that basis denies them.

45. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 45 and on that basis denies them.

46. Asserts a legal conclusion to which no response is required, but to the extent a response is required for any remaining non-legal allegations, Applicant is without sufficient information to admit or deny the remaining allegations of Paragraph 46 and on that basis denies them.

47. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 47 and on that basis denies them.

48. Opposers' registrations speak for themselves and Applicant is otherwise without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 48 and on that basis denies them.

49. The application speaks for itself and Applicant is otherwise without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of Paragraph 49 and on that basis denies them.

50. Denies.

51. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 51 and on that basis denies them.

52. Denies.

53. Denies.

54. Denies.

55. Denies.

56. Denies.

AFFIRMATIVE DEFENSES

1. Opposers' Notice of Opposition, in whole or in part, fails to state a claim upon which relief can be granted.

2. Opposers have failed to state a valid claim of likelihood of confusion.

3. Opposers have failed to state a valid claim of confusion as to affiliation, source, sponsorship, endorsement, approval, connection or association.

Applicant reserves the right to assert any and all other affirmative defenses of which it becomes aware during the pendency of this matter.

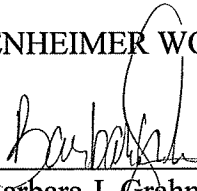
WHEREFORE, Applicant respectfully requests that the Notice of Opposition be dismissed with prejudice and on the merits, and that Applicant's application be allowed.

Respectfully submitted,

OPPENHEIMER WOLFF & DONNELLY LLP

Dated: May 10, 2014

By



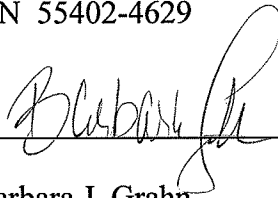
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ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May, 2014, I served a true and correct copy of the foregoing Answer to Notice of Opposition on counsel of record by depositing a true and correct copy thereof in the United States mail in a sealed envelope with postage thereon fully prepaid, addressed as follows:

Timothy D. Sitzmann, Esq.
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